

BOYAMIAN LAW, INC.

Michael H. Boyamian, SBN 256107
550 North Brand Boulevard, Suite 1500
Glendale, California 91203-1922
Telephone: (818) 547-5300
Facsimile: (818) 547-5678
E-mail(s): michael@boyamianlaw.com

KIZIRIAN LAW FIRM, P.C.

Armand R. Kizirian, SBN 293992
550 North Brand Boulevard, Suite 1500
Glendale, California 91203-1922
Telephone: (818) 221-2800
Facsimile: (818) 221-2900
E-mail(s): armand@kizirianlaw.com

David Mara, Esq. (SBN 230498)
Matthew Crawford, Esq. (SBN 310230)

MARA LAW FIRM, PC

2650 Camino Del Rio North, Suite 205
San Diego, California 92108
Telephone: (619) 234-2833
Facsimile: (619) 234-4048

Attorneys for Plaintiffs ASHLEY CABALLERO,
AMERICA CABALLERO, and LUIS VENEGAS,
Others Similarly Situated, Other Aggrieved
Employees, and the General Public

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

ASHLEY CABALLERO, an individual, on
behalf of herself, all other aggrieved
employees, and the general public,

Plaintiffs,

v.

FIDELITONE LAST MILE, INC., a
Delaware corporation; and DOES 1 through
25, inclusive,

Defendant.

Case No. CIVSB2102002

**DECLARATION OF ARMAND R. KIZIRIAN
IN SUPPORT OF PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT, CONDITIONAL
CERTIFICATION, APPROVAL OF CLASS
NOTICE, SETTING OF FINAL APPROVAL
HEARING DATE**

Date: February 10, 2022

Time: 10:00 a.m.

Judge: Hon. David S. Cohn

Dept.: S26

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

1. I am an attorney duly licensed to practice law in the State of California. I am one of the attorneys of record in the instant litigation, and I make this declaration in support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement. All of the information set forth herein is based on my personal and firsthand knowledge and if called and sworn as a witness, I could and would competently testify thereto.

3. Since my admission to the bar, my practice has focused upon plaintiffs-side employment matters, especially wage and hour class and representative actions. I have litigated numerous off-the-clock, unpaid overtime, meal break, rest break, misclassification, and piece-rate cases. In addition, my practice has also encompassed individual employment actions such as for wrongful termination and retaliation.

4. I have been closely involved in a significant number of wage and hour and consumer class and representative matters since I began practicing several years ago. Many of these cases have resulted in substantial recoveries for employees and consumers across California. Examples of these recoveries include the following matters:

- a. *Cortes v Daley Foods*, Case No. BC 496955 and *Gutierrez v. Daley Foods*, Case No. BC524915 (Los Angeles County Superior Court, 2015), wage and hour class action involving California Labor Code violations relating to restaurant workers, settled for \$2.2 million.
- b. *Fuentes, et al. v. Macy's West Stores, Inc.*, Case No. CV 14-00790-ODW (FFMx) (C.D. Cal 2015) wage and hour class action involving misclassification of independent contractors, which settled for \$4 million.

- 1 c. *Leos v. FedEx*, Case No. 14-02864-ODW-AGR (C.D. Cal. 2015), a class action for
2 unpaid wages pursuant to the Living Wage Ordinance, settled for \$385,000.
- 3 d. *Timothy J. Connell, et al, Klara Paksy, et al and Dale Bystrom, et al v. CVS*
4 *Pharmacy, Inc., et al.*, LASC Case Nos. BC523172, BC523491, BC525991 (2016)
5 wage and hour class action involving Labor Code overtime violations on behalf of
6 pharmacists (\$7,461,600 settlement).
- 7 e. *Angil Sharobiem, et al v. CVS Pharmacy, Inc., et al.*, Case No. 2:13-cv-09426-GHK-
8 FFM (C.D. Cal. 2016) wage and hour class action involving Labor Code overtime
9 violations on behalf of pharmacists (\$2,937,600 settlement).
- 10 f. *Rimanpreet Uppal v. CVS Pharmacy, Inc., et al.*, Case No. 3:14-cv-02629-VC (N.D.
11 Cal. 2016) wage and hour class action involving Labor Code overtime violations on
12 behalf of pharmacists (\$2,350,800 settlement).
- 13 g. *Ian H. Stark, et al. v. CVS Pharmacy, Inc., et al.*, LASC Case Nos. BC476431,
14 BC489738, BC501118, BC502723, BC526977, BC570812 (2016) wage and hour
15 class action involving Labor Code travel time violations on behalf of pharmacists
16 (\$2,000,000 settlement).
- 17 h. *Phillips v. AccentCare, Inc., et al.*, Case No. CIVDS1620673 (2017) wage and hour
18 class action involving Labor Code overtime violation on behalf of home health nurses
19 and other home health professionals (\$1,500,000.00).
- 20 i. *Pursell v. Pacific Wings, LLC*, LASC Case No. BC522083 (2017) wage and hour
21 class action involving Labor Code off-the-clock, overtime, meal and rest break, and
22 unreimbursed business expense violations on behalf of restaurant servers
23 (\$1,300,000).
- 24 j. *Hooper v. URS Midwest, Inc.*, Case No. CIVDS1607489 (2017) wage and hour class
25 action involving Labor Code overtime violation on behalf of Car Haulers
26 (\$2,900,000).
- 27 k. *Tyrer v First Student, Inc.*, Case No. BC459305 (2017) wage and hour class action
28 involving Labor Code overtime violations on behalf of school bus drivers (\$475,000

settlement).

- l. *Nunez v. CompuCom Systems, Inc.*, LASC Case No. BC618385 (2017) wage and hour class action involving Labor Code overtime, meal and rest break, and unreimbursed business expense violations on behalf of home-based service technicians (\$1,500,000).
- m. *Garcia v. Macy's West Stores, Inc., et al.*, Case No. 3:16-cv-04440-WHO (N.D. Cal. 2017) wage and hour class action involving misclassification of independent contractors (\$1,550,000 partial settlement).
- n. *Oard v. Daily Press, LLC, et al.*, Case No. 5:16-cv-02039-SVW-KK (C.D. Cal. 2018) wage and hour class action involving misclassification of independent contractor newspaper carriers (\$500,000 settlement).
- o. *Patrick Malone, et al. v. KAG West, LLC, et al.*, Alameda County Superior Court Case Nos. RG15784137 and RG16814354 (2019) wage and hour class and PAGA actions involving overtime and meal and rest break violations for truck drivers (\$1,600,000 settlement).
- p. *Raymond Cressall, et al. v. Galpin Motors, Inc., et al.*, San Bernardino County Superior Court Case No. CIVDS1809319 (2019), wage and hour class action concerning overtime and meal and rest break violations in re a commission-only compensation plan (\$2,000,000).
- q. *Pae, et al. v. Fox Restaurant Concepts, LLC, et al.*, Case No. 2:16-CV-06965-DSF-FFM (C.D. Cal. 2019) wage and hour class action involving Labor Code off-the-clock, overtime, meal and rest break, and unreimbursed business expense violations on behalf of restaurant servers (\$900,000).
- r. *Miranda, et al. v. R&L Carriers Shared Services, LLC*, Case No. 2:18-cv-10063-SVW-JC (C.D. Cal. 2020), wage and hour class and PAGA action involving failure to provide meal and rest breaks and reimbursement of necessary expenditures to California-based truck drivers (\$375,000).

///

- 1 s. *Delores Humes, et al. v. First Student, Inc.*, Eastern District of California Case No.
2 1:15-cv-01861-BAM, wage and hour class action involving Labor Code wage
3 statement violations on behalf of school bus drivers (\$650,000 settlement).
- 4 t. *Rita Khatchadourian, et al. v. Sterling Bank and Trust, FSB*, Alameda County
5 Superior Court Case No. RG19003028 (2020), wage and hour PAGA action
6 concerning overtime, meal break, rest break, and commission agreement violations
7 for bank employees (\$300,000 settlement).
- 8 u. *Garcia v. Macy's West Stores, Inc., et al. ("Garcia II")*, Case No. 3:16-cv-04440-
9 WHO (N.D. Cal. 2020) wage and hour class action involving misclassification of
10 independent contractors (\$3,500,000 partial settlement).
- 11 v. *Perez v. The Roman Catholic Archbishop of Los Angeles*, Los Angeles County
12 Superior Court Case No. BC714614 (2021) wage and hour class action on behalf
13 cemetery workers concerning unpaid overtime, meal and rest break violations
14 (\$1,300,000 settlement).
- 15 w. *Espinoza v. Williams Sonoma, Inc., et al.*, Los Angeles County Superior Court Case
16 No. BC693245 (2021) wage and hour class action involving misclassification of
17 independent contractors (\$2,250,000).
- 18 x. *Kim v. Korea Times of Los Angeles, Inc.*, LASC Case No. BC643503 (2021) wage
19 and hour class action involving Labor Code off-the-clock, overtime, meal and rest
20 break, and unreimbursed business expense violations on behalf of newspaper
21 employees (\$550,000).
- 22 y. *Gonzales v. San Gabriel Transit, Inc.*, Los Angeles County Superior Court Case No.
23 BC536584, California Court of Appeal Case No. B282377, California Supreme Court
24 Case No. S259027 – denial of class of misclassified taxi cab drivers reversed by
25 Court of Appeal after published opinion, *Gonzales v. San Gabriel Transit, Inc.*, 40
26 Cal. App. 5th 1131, 1149 (2019), *review dismissed, cause remanded sub nom.*, 481
27 P.3d 1144 (Cal. 2021).

28 ///

5. In addition, I have also been certified as class counsel following contested class certification motions in the following matters: *Clark v. Quest Diagnostics Clinical*, et al., L.A.S.C. Case No. BC594022 (May 2019); *Villasenor, et al. v. La Pizza Loca, Inc., et al.*, L.A.S.C. Case No. BC642655 (March. 2021); and *Ornelas v. Tapestry, Inc.*, N.D. Cal., Case No. 3:18-cv-06453-WHA (August 2021).

6. The proposed settlement is the result of substantial investigation, litigation, and negotiations between the Parties. The prospect of settlement of this case was facilitated through the respected mediator, Mark S. Rudy, Esq. Negotiations were, at all times, adversarial, non-collusive, in good faith, and at arms-length. Thus, the Settlement Agreement is the product of extensive and informed negotiations between counsel with substantial litigation experience, who are fully familiar with the legal and factual issues in this case, and who have experience litigating and settling complex and class action cases, including employment cases.

7. Given the difficulties faced in winning class certification and securing liability, particularly in a case such as this, Plaintiffs' Counsel believe that this settlement provides excellent relief to the Contract Carriers, Drivers, and Helpers of Fidelitone Last Mile, Inc., whom Plaintiffs' Counsel believe were misclassified as independent contractors by Defendant. Given the difficulties of pursuing a misclassification class action and the substantial sum offered by Defendant to resolve this matter, Plaintiffs' Counsel strongly believe that preliminary approval of the proposed class action settlement should be granted.

I declare, under penalty of perjury of the laws of California, the foregoing to be true and correct. Executed this 18th day of January 2022, in Glendale, California.

A.R.K

Armand R. Kizirian